

**DEPARTMENT OF STATE REVENUE**

**LETTER OF FINDINGS NUMBER: 99-0385P**

**Gross Income Tax  
Calendar Year Ended 12/31/97**

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

**ISSUE(S)**

**I. Tax Administration – Penalty**

**Authority:** IC 6-8.1-10-2.1(d); 45 IAC 15-11-2

Taxpayer protests the penalty assessed.

**STATEMENT OF FACTS**

Taxpayer, a Delaware corporation, protests penalties assessed for calendar year ended December 31, 1997.

**I. Tax Administration – Penalty**

**DISCUSSION**

Taxpayer protests the late payment penalty assessed because as of 12/31/96 it took all 125 entities and merged them into one C-Corp that allowed easier tax preparation. Taxpayer's preparer prepared all returns for all states and 1996 is the first C-Corp year. Taxpayer states it caught its own error and paid the amount before the billing was issued.

IC 6-2.1-5-1.1(b) (Quarterly returns) states:

Except as provided in subsections (d) through (g), a taxpayer shall file gross income tax returns with, and pay the taxpayer's gross income tax liability to, the department by the due date of the estimated return. A taxpayer who utilizes a taxable year that ends on December 31 shall file the taxpayer's estimated gross income tax returns and pay the tax to the department on or before April 20, June 20, September 20, and

December 20 of the taxable year.

IC 6-8.1-10-2.1 assesses a penalty (a) If a person:

(2) fails to pay the full amount of tax shown on the person's return on or before the due date for the return or payment.

On September 17, 1999 the department issued its proposed assessment for the tax balance, penalty, and interest. Penalty was calculated at ten percent (10%) for the payment made on June 16, 1998 less credit for payment previously made. The penalty was assessed because the payment was late and less than ninety percent (90%) of the expected tax due was not paid by the original due date.

IC 6-8.1-6-1 clearly states that at least ninety percent (90%) of the tax that is reasonably expected to be due must be paid on or before the due date or penalties may be imposed for failure to pay the tax. Although the taxpayer caught its own error, the payment was made after the original due date.

In addition, taxpayer failed to provide reasonable cause to allow the department to waive its penalty. Taxpayer, as the successor of several S-corporations that operated in the State of Indiana, should have made itself aware of its tax liabilities prior to filing its Indiana tax returns.

### **FINDING**

Taxpayer's protest is denied.